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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/716,223	11/22/96	VAN SCHOUWENBURG	G 961170

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IM62/0202

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EXAMINER

SHERRER, C

ART UNIT

PAPER NUMBER

1761

23

DATE MAILED:

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Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
08/716,223

Applicant(s)

Schouwenburg

Examiner
Curtis E. Sherrer

Group Art Unit
1761



☒ Responsive to communication(s) filed on Nov 17, 1999

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1, 3, 4, 9-12, and 14-20 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1, 3, 4, 9-12, and 14-20 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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Part III DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claims 1, 3,4, 9-12, and 14-20 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant has amended Claim 1 to recited that the "mixing an acidifying agent with the pieces of meat . . . , while holding the pieces of meat against each other" No basis for this phrasing could be found in the specification.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 3, 4, 12, 14-15, and 18-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Weiss et al (U.S. Pat. No. 4,772,477).

4. Weiss et al teach the production of a meat emulsion product, such as sausage, whereby the meat emulsion is prepared as shown in Example 1-3. Salt is one ingredient. The ingredients, including ground pork and beef, (other than the acid) are combined and mixed thoroughly. An acid, encapsulated citric acid, is then added by blending. The mixed acid/meat emulsion is then

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placed into casing and held at between 32 to 80 °F. The table, at the top of col. 6, shows that the pH drops from 5.85 to 4.8-4.4.

5. Claims 1, 3, 4, 12, 14, 15, and 18-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Rombauer et al (The Joy of Cooking, pages 812-13) for the reasons set forth in the last Office Action.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 3, 4, 9-12 and 14-20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Weiner (U.S. Pat. No. 3,740,235) in view of Bauer et al. (Abstract of German Pat. No. 1,692,110) for the reasons set forth in the last Office Action.

8. Claims 1, 3, 4, 9-12 and 14-20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Weiss et al in view of Weiner.

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9. Weiss et al and Weiner teach that previously cited. Weiss et al do not teach the addition of finely ground and seasoned meat, i.e., forcemeat, as a binding agent. Weiner teach a method of forming a beef loaf. Specifically, chunks of meat are mixed with "relatively finely ground beef" as a binding agent, salt, and heated to a range of 80-120F, followed by rapid chilling (col. 2, lines 44 to 54). It would have been obvious to those of ordinary skill in the art to use the binding agents of Weiner in conjunction with the process of Weiss et al because combining materials, or additives for their art recognized function and said additives do perform their art recognized function is obvious. *In re Kerkhoven*, 205 U.S.P.Q. 1069; *In re Castner*, 186 U.S.P.Q. 213.

Response to Arguments

10. Applicant's arguments filed 12/17/98 have been fully considered but they are not persuasive.

11. Applicant argues that the prior art rejections are improper and makes several statements in his Declaration as to what is necessary to practice the instant invention. Specifically, it is stated that the meat, that is covered by the exuded and solubilized proteins, must be pressed together before any acidification can take place. (¶ 2). This requirement is somewhat confusing, both with regard to common sense and the claims. Specifically, it is unclear how you are to add, i.e., mix, the acidifying agent while pressing the meat together. Rather, it appears that the acidifying

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agent is mixed, i.e., contacted with the exuded proteins and then the meat is pressed together. It is noted that it is not clear that the claims require that the meat is first pressed together and then acidified.

12. Applicant also states that the amount of wine added in the Rombauer et al reference is “by far not enough to result in a denaturation or coagulation of proteins.” (§ 10). First, if Applicant finds that a certain amount of acid must be added to the meat, then it should be claimed.

13. Second, it is considered that Applicant has only provided opinions as to what the prior art does and this is given little weight. It is also noted that some claims require a lowering of the pH at “about 0.5 units,” which would include values below 0.5 units. What is required is factual data that indicates what the change of pH would be, what amount of cohesiveness is created and how this relates to the claimed invention.

14. Applicant states that his “acidification and resulting denaturation and coagulation of the exuded proteins will have to only predominantly occur when the pieces of raw meat are pressed together. . . . This is a matter of dosing the correct amount of acidifying agent.” (§ 11). Again, if the amount is critical it should be claimed.

15. Applicant states that the Rombauer process does not anticipate the claimed invention because the rinsing of the brine will result in “rotting.” It is not clear why meat that has been soaked for 12 days in a ten percent salt solution, briefly rinsed with cold water and stored in

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refrigerator for four hours would rot. Nor has Applicant provided an factual evidence of such rotting.

16. Applicant has not proven that the exuded proteins, from the exposure of the meat to 12 days of soaking in a ten percent salt solution, would be washed away by briefly rinsing the meat with cold water. Nor have they shown that the addition of salt with acid would not produce the same results so that the prior art product and the claimed product are not identical.

17. With regard to the obviousness rejection, based on Weiner in view of Bauer et al, Applicant argues that there is no suggestion in Bauer et al to use the recited acids to solubilize and exude proteins. Bauer et al state that these are common emulsion additives and therefore there is motivation to use said acids to form an emulsion. The fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

18. Applicant also asserts that sorbic acid is unusable in his invention. It is noted that Bauer et al refer to other acids and therefore this argument is not persuasive.

Conclusion

19. No claim is allowed.

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20. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis Sherrer whose telephone number is (703) 308-3847. The examiner can normally be reached on Tuesday through Friday from 6:30 to 4:30.

22. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Lacey, can be reached on (703)-308-3535. The fax phone number for this Group is (703)-305-3602.

23. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0651.



Curtis E. Sherrer
January 31, 2000